

**COMMONWEALTH OF KENTUCKY  
KENTUCKY BOARD OF TAX APPEALS  
FILE NOS. K02-S-29 and K03-S-05**

**NATIONWIDE INSURANCE COMPANY**

**APPELLANT**

v.

**ORDER NO. K-19164**

**PULASKI COUNTY PROPERTY  
VALUATION ADMINISTRATOR**

**APPELLEE**

\* \* \* \* \*

The Kentucky Board of Tax Appeals has delegated authority to a hearing officer pursuant to KRS 13B.030. The hearing officer entered a recommended order in compliance with the provisions of KRS 13B.110. No exceptions or objections to the recommended order were filed. The Board has reviewed the record and the recommended order. The recommended order states:

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDED ORDER**

The Kentucky Board of Tax Appeals has delegated authority to Robert Layton to act as a hearing officer pursuant to KRS 13B.030. The hearing officer has considered the evidence of record in this case submitted at a hearing, and the transcript filed January 21, 2004, and makes the following findings of fact, conclusions of law and recommended disposition.

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### FINDINGS OF FACT

This assessment appeal is for real property owned by Nationwide Insurance. The property on appeal is 28 acres of commercial land on South U.S. Highway 27 in Somerset, Pulaski County, Kentucky. The property includes a 290,000 square foot shopping center known as Grand Central Shopping Center. *Exhibit 3*. The center is located on the main commercial strip of Somerset, next to a shopping center that contains a Wal-Mart. The Wal-Mart in the adjacent shopping center used to be located in the subject shopping center. The adjacent shopping center is 100 % occupied.

E. Clark Toleman, an MAI appraiser, appeared and testified on behalf of Nationwide. Toleman valued the property at \$3,600,000. Nationwide purchased the property in 1995 for \$10.15 million. Toleman relied on both the market and income approach in arriving at his valuation of the property.

In Toleman's sales approach, Toleman made no adjustments to comparable sales prices, although the sales included sales that were five years older than the subject date of valuation. Toleman could not provide adequate reasons for not including adjustments for different conditions at comparable property sales. *Transcript, p. 74*. Although Toleman testified that he used the comparable sales in a weighted manner based on the degree of comparability, he did not use any spreadsheet approach for the weighing, and could not provide any documentation showing how he determined what weight was assigned to each sale. *Transcript, p. 91*.

Toleman also acknowledged the comparable sales used had vacancy rates much higher than the 20 % stabilized vacancy rate Toleman assigned the subject property, which would result in an inaccurately low value using the sales approach. In explaining his choice of 20 %, Toleman

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said, “I’m showing what investors – the best case, and I’m saying this is the best case. This may be way off base, you know. The twenty percent may be pie in the sky. But I’m using that as a best case number. So I think I’ve covered any reality here.” *Transcript, p. 86.*

Toleman denied that the subject property would have more value than the comparable sales used, despite the fact that it is significantly larger than most of the comparable sales. *Transcript, p. 77.*

Toleman acknowledged that Comparable Sale 2, which he assigned substantial weight in valuing the property, was a sale from Murray, Kentucky of a property that was located away from Murray’s main commercial strip. Toleman also acknowledged that Somerset is a better market area than Murray. *Transcript, p. 82.* Because of the lack of adjustments for differing conditions at the comparable properties and because of the different conditions presented by the subject property, the hearing officer finds the comparable sales approach has little value for use in valuing the subject property.

While the income approach in this appeal is more probative for valuation than the comparable sales approach, the income approach also included items that were unjustified or unexplained. Some expenses that were in fact paid by the tenants were still shown as expenses to the owner, including approximately \$50,000 in CAM expenses. Toleman responded to questions on the \$50,000 in extra CAM expenses, explaining “we’re not talking about a significant amount of money here.” *Transcript, p. 68.* Toleman also responded by explaining that he could have included the CAM, and then just modified his other rates such as vacancy rate in order to make his numbers come out the same. *Transcript, p. 69.*

Toleman also defended the estimations in his income approach by stating:

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I'm estimating that, you know, almost half the center – more than half the center, I'm estimating what that rent will be. That's a big hypothesis, okay? Although it is based on reality. So for me then to break down my expenses beyond just a percentage, you know, you get more and more into la la land, you know. *Transcript, p. 70.*

Toleman could not explain why the center's expenses had been on a substantial downward trend in the years leading up to the 2002 and 2003 valuation dates. Toleman also could not explain why the "actual" expenses listed in the appraisal were higher than the expenses provided by Nationwide from their actual balance sheets. *Transcript, p. 93, 96-97.*

While Toleman's income approach is most appropriate for valuing the subject property, the hearing officer finds two adjustments are required. This subject property is located on the most desirable part of Somerset's commercial strip, and is immediately adjacent to a shopping center that is 100 % occupied. Despite the actual \$5 per square foot rent being received by Kroger's at the subject property, Toleman "hypothesized" that the former Wal-Mart area in the subject property could not be rented for more than \$2 per square foot. The subject property clearly had suffered a setback with the loss of Wal-Mart; however, with the remodeling and the highly desirable location, the hearing officer finds the former Wal-Mart area has a market rent of at least \$3.25 per square foot. Similarly, Toleman's use of a 20 % vacancy rate for a remodeled shopping center next to a shopping center that is 100 % occupied is not supported by the information presented with his appraisal. The hearing officer finds a 10 % vacancy rate for the subject property more than adequately reflects any vacancies and losses necessary to consider in valuing the shopping center.

The hearing officer finds the income approach with the above-mentioned adjustments is most appropriate for use in valuing the subject property. After the adjustments, the hearing

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officer finds the potential gross income (*Exhibit 3, p. 44*) for the property is \$1,277,950, and the vacancy and loss for the property is \$127,795. The net income is \$670,972. The hearing officer finds the fair cash value of the property as of January 1, 2002 and January 1, 2003 is \$5,367,776.

### **CONCLUSIONS OF LAW**

The Kentucky Board of Tax Appeals is vested with exclusive jurisdiction to hear and determine appeals from final rulings, orders and determinations of the Pulaski County BAA pursuant to KRS 131.340(1).

The function of the Board is not simply to review the action of the Pulaski County BAA, but to try anew the issues as presented. *Jefferson County Property Valuation Administrator v. Oxford Properties, Inc.*, Ky.App., 726 S.W.2d 317, 319 (1987). See KRS 131.340(1).

Section 172 of the Kentucky Constitution mandates that "all property shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale."

The choice of the most appropriate and reliable approach to valuation is within the prerogative of the Board. *Jefferson County Property Valuation Administrator*, 726 S.W.2d at 319.

Regardless of the manner or method used by the Property Valuation Administrator or the decision of the Kentucky Board of Tax Appeals, the finding of valuation must be at its fair cash value, estimated at the price it would bring at a fair voluntary sale. *Helman v. Kentucky Board of Tax Appeals*, Ky.App., 554 S.W.2d 889(1977).

The hearing officer finds the fair cash value of the subject property as of January 1, 2002 and January 1, 2003 is \$5,367,776.

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**RECOMMENDED ORDER**

The hearing officer recommends the final rulings of the Pulaski County BAA be reversed, and recommends the real property be assessed at a fair cash value of \$5,367,776 as of January 1, 2002 and January 1, 2003.

This is a recommended order, and each party shall have fifteen (15) days from the date this recommended order is mailed to file exceptions to the recommendations with the Kentucky Board of Tax Appeals. Failure to file exceptions to the recommended order may result in a party being unable to seek judicial review on appeal. This recommended order has been sent by first class mail on the date below to the last known address of the parties.

**ORDER**

The Kentucky Board of Tax Appeals has considered the record, and accepts the recommended order of the hearing officer, and adopts it as the Board's final order. Failure to file exceptions to an administrative hearing officer's recommendations after a hearing constitutes a failure to exhaust administrative remedies and precludes appellate review. *Swatzell v. Natural Resources and Environmental Protection Cabinet*, Ky App 962 SW 2d 866 (1998). The following information is provided pursuant to the final order requirements of KRS Chapter 13B:

This is a final and appealable order which may be appealed to the Circuit Court of the county in which the appeal originated by filing a petition of appeal in the appropriate Circuit Court within thirty (30) days after this final order is mailed or delivered by personal service,

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pursuant to KRS 13B.140(1) and KRS 131.370(1). Copies of the petition of appeal shall be served by the Petitioner upon the Kentucky Board of Tax Appeals and all parties of record. The petition of appeal shall include the names and addresses of all parties to the proceedings and the Kentucky Board of Tax Appeals, and a statement of the grounds on which the review is requested. The petition of appeal shall be accompanied by a copy of this final order. Within twenty (20) days after service of the petition of appeal, or within further time allowed by the Circuit Court, the Kentucky Board of Tax Appeals shall transmit to the reviewing court the original or a certified copy of the official record of the proceeding under review in compliance with KRS 13B.140(3).

**DATE OF ORDER  
AND MAILING:  
July 19, 2004**

KENTUCKY BOARD OF TAX APPEAL

ATTEST:

BILL BEAM, JR.  
EXECUTIVE DIRECTOR